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In the Supreme Court of the United States.

OCTOBER TERM, 1976.

No. 76-42.

RONALD CASSESSO ET AL.,
PETITIONERS,

v.

LARRY MEACHUM, WARDEN, ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Brief for the Respondents in Opposition.

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Opinion Below.

The opinion of the First Circuit can be found at 533 F. 2d 713 (1976) and has been appended to the petition filed in this case.

Jurisdiction.

The jurisdictional requisites are adequately set forth in the petition.

Questions Presented.

The petitioners have set out eleven questions presented. The petitioners, however, pose a more fundamental issue when they state at p. 10 of their petition: "It should not be asking too much of the appellate processes that the constitutional arguments which they now raise be given formal consideration." Accordingly, the respondents submit that the questions are whether "constitutional arguments" are in fact presented; and, in any event, whether this Court on this kind of petition sits as an appellate court to give "formal consideration" to issues not shown to be of any particular significance.

Statement.

I. Proceedings.

The petitioner Grieco was convicted in the state court in 1968 of first degree murder; the remaining petitioners were convicted as being accessories before the fact; all petitioners were also convicted of conspiracy to murder (two indictments). The convictions were affirmed by the Supreme Judicial Court of Massachusetts [see *Commonwealth* v. *French*, 357 Mass. 356 (1970)] and subsequent denials of motions for a new trial were also affirmed [see *Commonwealth* v. *Cassesso*, 360 Mass. 570 (1971)].

In January of 1974, petitions for writs of habeas corpus were filed in the United States District Court for the District of Massachusetts. On July 10, 1975, the petitions were dismissed. The judgment of the District Court was affirmed by the First Circuit on April 7, 1976.

II. Facts.

As stated by the First Circuit in *Grieco* v. *Meachum*, *supra*, at 715:

> The government's state witness at trial was Joseph Baron-Barboza who testified, in substance, that petitioners Tameleo and Limone approached him to kill Edward Deegan in 1965, and that he enlisted the aid of petitioners Grieco, French, Cassesso, and Salvati, among others, to carry out this task. A further statement of the facts can be found in the reported opinions of the Massachusetts state courts. [*Commonwealth* v. *French*, 357 Mass. 356 (1970), and *Commonwealth* v. *Cassesso*, 360 Mass. 570 (1971).]

Argument.

The petitioners were convicted in the state court in a very lengthy trial over eight years ago. As stated by the Supreme Judicial Court in *Commonwealth* v. *French*, *supra*, at 362, n. 2:

> The trial commenced on May 27, 1968. Numerous motions had been heard prior to that date. The trial judge examined 1,183 veniremen. A jury of sixteen per-

sons was completed on June 26, the twenty-second day of trial, in proceedings recorded on 2,749 transcript pages. The trial continued until July 31, 1968, a total of fifty days. The stenographic record occupies 7,555 pages (exclusive of 614 pages of pre-trial hearings). There are 4,806 pages of transcript of proceedings after the last juror was sworn. The defendants saved 792 exceptions at trial and made 469 assignments of error.

The state court has on two occasions examined the issues raised by the petitioners and, without dissent, affirmed the convictions. *Commonwealth* v. *French, supra*; *Commonwealth* v. *Cassesso, supra*. The United States District Court and the Court of Appeals have examined these issues and have also, without dissent, found no cause to grant relief.

Judge Skinner of the United States District Court found that eighty-eight of the ninety "grounds asserted by the petitioners fall into three categories: (1) frivolous or based on a misreading of the record, (2) correct legal statements unsupported by any evidence of actual prejudice, and (3) errors of law and procedure which are not of constitutional proportions and did not affect the substantial fairness of the trial" (Petition at p. 136). The First Circuit essentially agreed. *Grieco* v. *Meachum, supra* at 716. The issues warranting any extended discussion were comprehensively and, respondents respectfully submit, correctly dealt with by Judge Skinner and the First Circuit. In any event, no substantial questions are raised and no conflict between decisions of the Circuits is indicated. The petitioners have had several days in several courts.

Conclusion.

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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Assistant Attorney General.